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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT DAMJANOVIC,

Defendant and Appellant.

E074696

(Super.Ct.No. RIF100782)

OPINION

APPEAL from the Superior Court of Riverside County. John D. Molloy, Judge.  
Affirmed.

Mark D. Johnson, under appointment by the Court of Appeal, for Defendant and  
Appellant.

No appearance for Plaintiff and Respondent.

## I

### INTRODUCTION

In 2001, defendant and appellant Robert Damjanovic personally beat to death his girlfriend. A jury convicted defendant of second degree murder (Pen. Code,<sup>1</sup> § 187, subd. (a)) and torture (§ 206). He was sentenced to prison for 15 years to life for the murder offense, plus a consecutive term of life with the possibility of parole for the torture offense.

Defendant appeals from a postjudgment order denying his petition for resentencing pursuant to section 1170.95 and Senate Bill No. 1437 (Senate Bill 1437). Based on our independent review of the record, we affirm the order.

## II

### FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>

On December 7, 2001, Damjanovic, who had a .23 blood alcohol level, beat to death his girlfriend, the victim, whose blood alcohol level was .30 or .41.<sup>3</sup> The victim had sustained 121 external injuries. She died when her breastbone was broken, probably by applying a knee to her chest, and cut her heart. Also contributing to her death were head injuries and indications of strangulation. She had 33 injuries to her head and neck,

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<sup>1</sup> All future statutory references are to the Penal Code unless otherwise stated.

<sup>2</sup> The factual background is taken from this court's nonpublished opinion in defendant's prior appeal, case No. E036118. (*People v. Damjanovic* (July 20, 2005, E036118) [nonpub. opn.].)

<sup>3</sup> Both abused alcohol.

58 to her torso and extremities, and 10 internally. Most were caused by blunt force, and she had bite or suction injuries to her right nipple and buttocks. She had sustained injury to her mouth caused by “a force applied to the region with some type of grinding or pushing motion as that force is continued to be applied, causing the teeth to just rip up the tissues on the inside of the lip.” The facial injuries had not been inflicted at the same time as the fatal chest injury.

On April 24, 2002, an information was filed charging defendant with first degree murder (§ 187, subd. (a)) and torture (§ 206).

On March 24, 2004, defendant was convicted of second degree murder and torture.

On June 22, 2004, defendant was sentenced to 15 years to life for murder and a consecutive term of life with the possibility of parole for torture.

On January 1, 2019, Senate Bill 1437 became effective (2017-2018 Reg. Sess.), which amended the felony-murder rule and the natural and probable consequences doctrine as it relates to murder. (See Stats. 2018, ch. 1015, § 1, subd. (f).) Senate Bill 1437 also added section 1170.95, which allows those “convicted of felony murder or murder under a natural and probable consequences theory . . . [to] file a petition with the court that sentenced the petitioner to have the petitioner’s murder conviction vacated and to be resentenced on any remaining counts . . . .” (§ 1170.95, subd. (a).)

On October 6, 2019, defendant filed a petition for resentencing pursuant to section 1170.95.

On October 29, 2019, the People filed a response to defendant's petition based on the constitutionality of Senate Bill 1437 and resulting statutes. On this same date, defendant's appointed counsel filed a reply to the People's motion, noting case law finding Senate Bill 1437 constitutional.

On January 17, 2020, the trial court heard oral argument on defendant's petition for resentencing. The trial court denied the petition, finding defendant was "the sole defendant in the case." The trial court's ruling was based on the prosecutor's representation that the opinion in defendant's direct appeal indicated "while drunk [defendant] beat his girlfriend to death" and that defendant was the "actual killer." The prosecutor also noted that "there were 120 external injuries" and that defendant "was convicted not only of murder, but also for torture."

On February 3, 2020, defendant filed a notice of appeal from the trial court's denial of his section 1170.95 petition for resentencing.

### III

#### DISCUSSION

After defendant appealed, upon his request, this court appointed counsel to represent him on appeal. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *Anders v. California* (1967) 386 U.S. 738 (*Anders*), setting forth a statement of the case, a summary of the facts and potential arguable issues, and requesting this court to conduct an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief, and he has not done so.

On September 30, 2018, the Governor signed Senate Bill 1437. “The legislation, which became effective on January 1, 2019, addresses certain aspects of California law regarding felony murder and the natural and probable consequences doctrine by amending Penal Code sections 188 and 189, as well as by adding Penal Code section 1170.95, which provides a procedure by which those convicted of murder can seek retroactive relief if the changes in law would affect their previously sustained convictions.” (*People v. Martinez* (2019) 31 Cal.App.5th 719, 722 (*Martinez*).)

Prior to Senate Bill 1437’s enactment, a person who knowingly aided and abetted a crime, the natural and probable consequence of which was murder or attempted murder, could be convicted of not only the target crime but also of the resulting murder or attempted murder. (*People v. Chiu* (2014) 59 Cal.4th 155, 161; *In re R.G.* (2019) 35 Cal.App.5th 141, 144 (*R.G.*).) “This was true irrespective of whether the defendant harbored malice aforethought. Liability was imposed “‘for the criminal harms [the defendant] . . . naturally, probably, and foreseeably put in motion.” [Citations.]’ [Citation.]” (*R.G.*, at p. 144.) Aider and abettor liability under the doctrine was thus “vicarious in nature.” (*People v. Chiu*, at p. 164.)

Senate Bill 1437 “redefined ‘malice’ in section 188. Now, to be convicted of murder, a principal must act with malice aforethought; malice can no longer ‘be imputed to a person based solely on [his or her] participation in a crime.’ (§ 188, subd. (a)(3).)”

(*R.G., supra*, 35 Cal.App.5th at p. 144.) “Senate Bill 1437 also amended section 189, which defines first and second degree murder, by, among other things, adding subdivision (e). Under that subdivision, a participant in enumerated crimes is liable under the felony-murder doctrine only if he or she was the actual killer; or, with the intent to kill, aided and abetted the actual killer in commission of first degree murder; or was a major participant in the underlying felony and acted with reckless indifference to human life.” (*People v. Munoz* (2019) 39 Cal.App.5th 738, 749; § 189, subd. (e); Stats. 2018, ch. 1015, § 3; *People v. Lopez* (2019) 38 Cal.App.5th 1087, 1099-1100, review granted Nov. 13, 2019, S258175; *Martinez, supra*, 31 Cal.App.5th at p. 723.) “Senate Bill 1437 thus ensures that murder liability is not imposed on a person who did not act with implied or express malice,” or—when the felony-murder doctrine is at issue—“was not the actual killer, did not act with the intent to kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life.” (*People v. Munoz*, at pp. 749-750; Stats. 2018, ch. 1015, § 1, subds. (f), (g); *People v. Anthony* (2019) 32 Cal.App.5th 1102, 1147; *Martinez*, at p. 723.)

Senate Bill 1437 also added section 1170.95, which permits persons convicted of murder under a felony murder or natural and probable consequences theory to petition in the sentencing court for an order vacating their convictions and allowing defendant to be resentenced. (Stats. 2018, ch. 1015, § 4; *Martinez, supra*, 31 Cal.App.5th at p. 723.) An offender may file a section 1170.95 petition if he or she was prosecuted under a felony murder or natural and probable consequences theory, but under amended sections 188 or

189, could not have been convicted of first or second degree murder. (§ 1170.95, subd. (a).) If the petitioner makes a prima facie showing that he or she is entitled to relief, the trial court must conduct a hearing to determine whether to vacate the murder conviction and to recall the sentence and resentence the petitioner on any remaining counts. (§ 1170.95, subds. (c), (d)(1); *Martinez*, at pp. 723-724.) At such a hearing, both the prosecution and the defense may rely on the record of conviction or may offer new or additional evidence. (§ 1170.95, subd. (d)(3).) “[T]he burden of proof shall be on the prosecution to prove, beyond a reasonable doubt, that the petitioner is ineligible for resentencing.” (§ 1170.95, subd. (d)(3); *Martinez*, at pp. 723-724.)

In this case, defendant’s record of conviction demonstrates he is not eligible for relief under the provisions of section 1170.95. Defendant’s record of conviction shows that he was the actual killer of his girlfriend. Accordingly, defendant cannot make a prima facie showing he is entitled to relief under section 1170.95.

An appellate court conducts a review of the entire record to determine whether the record reveals any issues which, if resolved favorably to defendant, would result in reversal or modification of the judgment. (*Wende, supra*, 25 Cal.3d at pp. 441-442; *People v. Feggans* (1967) 67 Cal.2d 444, 447-448; *Anders, supra*, 386 U.S. at p. 744; see *People v. Johnson* (1981) 123 Cal.App.3d 106, 109-112.)

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the entire record for potential error and find no arguable error that would result in a disposition more favorable to defendant.

IV

DISPOSITION

The order denying defendant's section 1170.95 petition for resentencing is affirmed.

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CODRINGTON  
J.

We concur:

MILLER  
Acting P. J.

FIELDS  
J.